

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTSIN RE COLUMBIA UNIVERSITY
PATENT LITIGATION

MDL No. 1592 (MLW)

This Document Relates To All Actions

**COLUMBIA UNIVERSITY'S EMERGENCY MOTION TO SEAL
AND RESTRICT ACCESS TO CONFIDENTIAL INFORMATION
AND REQUEST FOR EXPEDITED HEARING**

Defendant The Trustees of Columbia University in the City of New York (“Columbia”) hereby moves this Court pursuant to Local Rule 7.2 for an order sealing the Reply Memorandum and Appendix filed by Biogen, Inc. (“Biogen”) and Genzyme Corp. (“Genzyme”) in support of their Joint Motion for a Preliminary Injunction to the extent they contain portions of the prosecution history of U.S. Patent Application No. 08/477,159 (the “’159 application”). The ’159 application is a patent application assigned to Columbia that is currently pending before the Patent and Trademark Office (“PTO”). In addition, Columbia moves the Court for an order limiting access to all portions of the prosecution history of the ’159 application to outside counsel for plaintiffs in this consolidated proceeding.

The prosecution history of the ’159 application is a confidential record under the Patent Act and the regulations promulgated thereunder. It is not available to the public during the time that the ’159 application is still pending before the PTO. Biogen and Genzyme have no legal basis for securing a portion of the prosecution history of the ’159 application—let alone placing it in a public court file. They have refused to stipulate to the relief requested in this emergency motion and, moreover, they have even refused to disclose how they improperly obtained a portion of the confidential prosecution history of the ’159

application. Columbia urgently requires the relief requested in this motion to maintain the confidentiality of the prosecution history before further dissemination and copying occurs.

Columbia respectfully requests that the Court provide the relief described above until Columbia reports to the Court as to the conclusion of the PTO's investigation into how Biogen and Genzyme improperly obtained a copy of these confidential documents. Upon receipt of this report, the Court can address whether the interim relief requested in this motion should continue for the remainder of the case and whether any additional relief may be appropriate.

The grounds for this motion are set forth in the concurrently filed (a) Memorandum In Support Of Columbia University's Emergency Motion To Seal And Restrict Access To Confidential Information; and (b) Affidavit of David I. Gindler, Esq. A proposed form of order is attached to this Motion.

REQUEST FOR EXPEDITED ORAL ARGUMENT

Columbia requests oral argument on this motion pursuant to LR 7.1(d) on an expedited basis because the motion pertains to confidential materials the disclosure of which has harmed, and will continue to harm, Columbia.

Respectfully submitted,

THE TRUSTEES OF COLUMBIA
UNIVERSITY IN THE CITY OF NEW
YORK

By its attorneys,

/s/ David I.Gindler
Morgan Chu
David I. Gindler
Jason G. Sheasby
Irell & Manella LLP
1800 Ave of the Stars, Suite 900
Los Angeles, CA 90067
(310) 277-1010
(310) 203-7199 (fax)

/s/ Wayne M. Barsky
Wayne M. Barsky
Kevin S. Rosen
Gibson, Dunn & Crutcher LLP
2029 Century Park East
Los Angeles, California
90067-3026
(310) 552-8500
(310) 551-8741 (fax)

Thomas F. Maffei (BBO # 313220)
Scott McConchie (BBO # 634127)
Griesinger, Tighe & Maffei, LLP
176 Federal Street
Boston, MA 02210-2600
(617) 542-9900
(617) 542-0900 (fax)

DATED: June 10, 2004

Certificate Of Compliance With Local Rule 7.1

We, Wayne M. Barsky and David I. Gindler, hereby certify that on June 8, 2004, counsel for Columbia conferred by telephone with counsel for the plaintiffs in this consolidated proceeding with respect to the issues raised in this motion, and that counsel were unable to resolve them except with respect to Wyeth and its wholly owned affiliate Genetics Institute LLC.

/s/ David I. Gindler
David I. Gindler

/s/ Wayne M. Barsky
Wayne M. Barsky

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[PROPOSED] ORDER SEALING DOCUMENTS

This matter is before the Court upon the motion of Defendant The Trustees of Columbia University in the City of New York (“Columbia”). The Court orders as follows:

(1) Tab 3 of the Reply Appendix supporting Plaintiffs’ Joint Motion for a Preliminary Injunction, which contains the October 23, 2003 Amendment to U.S. Patent Application No. 08/477,159, is hereby sealed until further order of the court after such time as the PTO completes its investigation into how Biogen and Genzyme obtained confidential portions of the ’159 application prosecution history.

(2) The quotation from the October 23, 2003 Amendment on page 8 of the Reply supporting Plaintiffs’ Joint Motion for a Preliminary Injunction shall be redacted from the Court’s publicly available record until such time as the PTO completes its investigation into how Biogen and Genzyme obtained confidential portions of the ’159 application prosecution history.

(3) Access to the sealed portions of the Reply and Appendix, as well as all other portions of the '159 application in the possession of the plaintiffs shall be restricted to the outside counsel of plaintiffs that are part of *In re Columbia University Patent Litigations*, MDL No. 1592.

IT IS SO ORDERED.

Honorable Mark L. Wolf
United States District Judge

Boston, Massachusetts

Dated: